

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION

DOCKET NO. 5:21cr13-KDB

UNITED STATES OF AMERICA

v.

RICHARD ALLEN CLARK

)
)
)
)
)

**MOTION FOR FINAL ORDER
AND JUDGMENT CONFIRMING
FORFEITURE**

NOW COMES the United States of America, by and through William T. Stetzer, Acting United States Attorney for the Western District of North Carolina, pursuant to Fed. R. Crim. P. 32.2(c)(2), and hereby request that this Court enter a Final Order and Judgment confirming forfeiture of the real property at 1734 Orchard Drive, Lenoir, North Carolina (hereafter, “the Lenoir Property”) identified in the Consent Order and Judgment of Forfeiture (Doc. 16) in this case. In support of this Motion, the Government respectfully shows the following:

I. Background

On February 17, 2021, a Grand Jury returned an Indictment (Doc. 1) against Defendant charging him with mail fraud, money laundering and filing false tax returns. The charges were based on Defendant’s embezzlement of \$1,030,000 from his former employer. The Indictment described how Defendant used some of the embezzled funds to pay down the mortgage on and make improvements to the Property. The Indictment contained a “Notice of Forfeiture and Finding of Probable Cause” whereby the Grand Jury found probable cause that a \$1,030,000 forfeiture money judgment and the Lenoir Property were subject to forfeiture.

On May 24, 2021 Defendant pled guilty via Plea Agreement (Doc. 12) to Counts Three (mail fraud scheme), Ten (false return), and Eleven (concealment money laundering) in the Indictment against him. In this Plea Agreement, Defendant agreed to the forfeiture of the money

judgment and the Lenoir Property. On June 3, 2021, this Court issued a Consent Order and Judgment of Forfeiture (Doc. 16) for the Lenoir Property and a money judgment in the amount of \$1,030,000.

From June 16, 2021 through July 14, 2021, the United States published, via www.fofeiture.gov, notice of this forfeiture and of the intent of the Government to dispose of the forfeited property according to law, and further notice to all third parties of their rights to petition the Court within sixty days from June 16, 2021, for a hearing to adjudicate the validity of any alleged legal interest in the property. (Doc. 20). In addition, on June 15, 2021 the United States sent direct notice via Federal Express to Linda A. Clark, wife of the Defendant and to JP Morgan Chase Bank, a lienholder. The notice advised the parties of the Government's intent to dispose of the forfeited property in accordance with the law and the right to submit a verified claim to this Court within thirty days of the receipt of this notice. (Doc. 18).

On July 13, 2021, JP Morgan Chase filed a Verified Petition for the Lenoir Property. (Doc. 19). On August 16, 2021, the United States filed a Motion for Consent Order for Third Party Petition. (Doc. 22). On August 17, this Court issued a Consent Order Third Party Petition adjudicating petitioner JP Morgan Chase's interest in the Lenoir Property. (Doc. 23).

The time for filing petitions has expired and no petitioners, other than JP Morgan Chase, have filed petitions for the Lenoir Property.

II. Memorandum of Law

Pursuant to Rule 32.2(c)(2), “[w]hen the ancillary proceeding ends, the court must enter a final order of forfeiture by amending the preliminary order as necessary to account for any third-party rights.” Other than JP Morgan Chase, no individuals or entities have filed petitions and the time for doing so has expired. Therefore, the Court may appropriately grant the Final Order and give the Government clear title to the Property for disposition in accordance with law.

WHEREFORE, the Government respectfully requests that this Court enter an Order and Judgment of Forfeiture in the form submitted herewith, finally forfeiting all right, title, and interest in the entirety of the following property, whether real, personal, or mixed, to the United States for disposition according to law, subject to the Consent Order for Third Party Petition adjudicating JP Morgan Chase's interest:

The real property located at 1734 Orchard Drive, Lenoir, North Carolina, more particularly described in a Deed to Richard A. Clark and wife, Linda A. Clark, recorded at Caldwell County Deed Book 1257 Page 0471.

Respectfully submitted, this, the 7th day of September, 2021.

WILLIAM T. STETZER
ACTING UNITED STATES ATTORNEY

s/ Benjamin Bain-Creed
Florida Bar # 0021436
Assistant United States Attorney
Suite 1650, Carillon Building
227 West Trade Street
Charlotte, North Carolina 28202
Telephone: (704) 344-6222
Email: benjamin.bain-creed@usdoj.gov